

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8978 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SIDDHSOMESHWAR KUDIYANA VIBHAGDUDH & VEGE.SELL COOP MANDALI

Versus

RAMUBHAI GOVANBHAI PATEL

Appearance:

MR DIPAK R DAVE for Petitioner

MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 29/07/98

CAV JUDGEMENT

#. Rule. Mr.D.G.Chauhan waives service of rule.

#. The petitioner Siddh Someshwar Kudiyana Vidhagdugh & vegetable sell Co-op Mandali Ltd (hereinafter referred to as 'the society') has filed this petition to challenge the award passed by the labour court, Surat in Reference No.49/1982 on 27th May,1992.

#. The respondent Ramubhainbhai Patel was working as a Secretary with the petitioner society. It is the allegation of the petitioner that when he was working as a Secretary, he had falsified and fabricated the accounts and misappropriated funds of the society. In view of the said claim, he was chargesheeted on 13-9-1981. Then a departmental inquiry was held and he was dismissed from service on 23-11-1981. Being aggrieved by the dismissal order the respondent raised an industrial dispute before the authorities and hence reference No.49/82 was referred to the labour court, Surat.

#. During the adjudication of the said reference the labour court recorded a finding that the departmental inquiry held by the petitioner was illegal and invalid, on 20-8-1992. Thereafter the petitioner and the respondent entered into settlement without prejudice to their contention in the said reference. It was agreed in the settlement dated 16-7-1993 to reinstate the respondent in the service of the petitioner from 3-8-1993 on the pay of Rs.485/-. Accordingly the respondent resumed his job on 3-8-1993.

#. But thereafter the petitioner by resolution dated 17-1-1995 retired the respondent on the claim that he had attained the age of 55 years an age of superannuation. Thereafter the Reference No.49/1982 came up for hearing. At the time of hearing of the said reference the respondent raised the dispute regarding his retirement. He contended that as per the rules and regulations, he was entitled to continue in service till age of 58 years and the age of superannuation is 58 years. The labour court allowed the said claim of the respondent. The labour court directed the petitioner to reinstate the respondent on old post and to continue him in the said post till he attends the age of 58 years i.e. till 20-8-97 and to pay him 75 % back wages between 2-8-93 and 19-1-95. Being felt aggrieved by the said award, the society has come before this court.

#. This reference was made over to the learned labour court in the year 1982. it is settled law that the labour court cannot travel beyond the ambit of reference. The labour court must confine its adjudication to those point of dispute which has been specified by the authorities in the reference. The labour court has to adjudicate only on that point referred to it and has no jurisdiction to travel beyond the same. Admittedly the respondent was dismissed from service on 23-11-81 and hence he had raised the industrial dispute which is referred to the learned

labour court. The reference which is referred is -

Whether the second party - workman is to be reinstated with full back wages ?

Therefore the labour court has to consider the following points even taking the wider scope of reference :

(i) Whether the workman was illegally / improperly dismissed ?

(ii) Whether the workman is to be reinstated ?

(iii) Whether the workman is entitled to backwages ?

(iv) If yes at what rate and for what period ?

Admittedly during the pendency of the said proceeding and after the labour court had held that the departmental inquiry was illegal and invalid, the parties have arrived at settlement on 16-7-1993, by which the respondent was reinstated from 3-8-93. Thereafter the adjudication before the labour court took place. Therefore the labour court ought to have considered only above 4 points. In view of the settlement between the parties on 16-7-93, there was no question of reinstatement of the workman as he was already reinstated.

#. But it seems that the learned labour court has not at all applied his mind and has passed an illegal and improper award. He has considered the questions / disputes as what is the age of superannuation and whether the respondent was properly and correctly retired. The said questions / disputes were not at all referred to him and they were beyond the ambit of the reference made to him. I say that the learned labour court has not applied his mind because inspite of admitted position that the respondent had worked with the petitioner between 3-8-1993 till 19-1-1995 and he has been paid wages. He has been awarded backwages for that period. As a matter of fact the respondent was removed from his job by petitioner on 23-11-83. Therefore it at all he was to get backwages they ought to have been between 23-11-1993 and 2-8-93. Similarly the learned labour court failed to note that on 19-1-95 the respondent was retired on interpretation of rule as regards the age of superannuation. He ought to have also born in mind that there was no reference to him as to when the workman ought to have been retired and inspite of the said, he proceed to decide that question. That consideration and

the decision thereon is without jurisdiction.

#. Thus in view of the reference referred to the learned labour court in 1982 he should consider the 4 questions mentioned in para No.6 above and answer them and thereafter pass the appropriate award. Hence I hold that the present petition will have to be allowed and the award passed by the labour court will have to be quash and set aside and the reference No.44/1982 must be restored to file with the direction to the learned labour court to rehear the parties afresh and to decide the reference and pass award by considering observations made in the judgment.

#. I, therefore allow this petition and quash and set aside the award passed on 27-5-1997 by labour court, Surat in Reference No.49/1982 and I hereby direct the learned labour court to restore the said reference No.49/1982 to file and decide the same by considering the observations made in this judgment and to pass a proper and appropriate award after rehearing both the sides afresh within three months from today. Both the petitioner and the respondents are directed to appear before the learned labour court on 20-8-1998. The Rule is thus made absolute in the above terms both side to bear their respective costs.

Date : 29-07-1998 (S.D.Pandit,J.)

(KPP)